



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FTI/170835

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**PRELIMINARY RECITALS**

Pursuant to a petition filed December 15, 2015, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Kenosha County Human Service Department in regard to FoodShare benefits (FS), a hearing was held on January 19, 2016, at Kenosha, Wisconsin.

The issue for determination is whether the agency had authority to certify Petitioner's unpaid public assistance debt to the Department of Revenue for state tax intercept action.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

I

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: [REDACTED]

Kenosha County Human Service Department  
8600 Sheridan Road  
Kenosha, WI 53143

**ADMINISTRATIVE LAW JUDGE:**

Debra Bursinger  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Kenosha County.
2. On June 11, 2015, the agency issued a Notice of FS Overissuance and worksheets to the Petitioner informing the Petitioner that the agency intends to recover an overissuance of FS benefits to the Petitioner in the amount of \$1,058 for the period of June 1, 2014 – July 31, 2014

for Petitioner's failure to report earned income to the agency. The notice informed the Petitioner of the opportunity to repay the overpayment voluntarily and informed him that a repayment agreement would be mailed to him separately. It was noted that the agreement must be returned by the due date indicated in the separate mailing. The notice also informed the Petitioner of the right to request a hearing by filing an appeal with the Division of Hearings and Appeals within 90 days of the date of the notice.

3. On July 2, 2015, a repayment agreement was mailed to the Petitioner. The agreement informed the Petitioner that he could make payment in full by July 25, 2015 or he could agree to make installment payments by returning the agreement with his first monthly payment by July 25, 2015. The notice further advised him of the following:

“A debt shall be considered delinquent if the debtor fails to make monthly payments by the due date three times over the life of the debt. . . A delinquent debt retains delinquent status regardless of future payment on the debt or future payment agreements. . . Failure to complete the repayment agreement and/or make scheduled payments may result in further collection actions including, but not limited to any of the following:

- 1) Referral to a credit bureau or collection agency
- 2) Referral to State and/or Federal tax offset programs
- 3) Wage garnishment.”

There is no evidence that Petitioner signed and returned the repayment agreement.

4. On August 4, 2015, September 2, 2015 and October 5, 2015, the agency issued dunning notices to the Petitioner. The notices advised how the Petitioner could make payments via mail or online. The notices contained the following language:

“If you are not making payment in full, you must complete and sign your repayment agreement and return it with your monthly payment amount to the address above. ***Failure to complete and return your repayment agreement, even if you have made payment(s) could result in delinquency and further collection action.***”

(Emphasis added).

5. On October 30, 2015, the Petitioner made a payment of \$20 on the FS debt. The Petitioner's wife also made a payment of \$20 on the FS debt on the same date.
6. There is no evidence that the Petitioner made a payment in November, 2015.
6. On December 11, 2015, the agency issued a notice of state tax intercept to the Petitioner advising the Petitioner that the agency may intercept state taxes for an unpaid public assistance debt of \$1,014.53.
7. On December 15, 2015, the Petitioner filed an appeal with the Division of Hearings and Appeals.

### **DISCUSSION**

State FoodShare agencies must “establish a claim against any household that has received more [FoodShare] benefits than it is entitled to receive.” 7 CFR § 273.18(a). Those responsible for paying an overpayment include “[e]ach person who was an adult member of the household when the overpayment...occurred. 7 CFR § 273.18(a)(4)(i). The department may recover an overpayment by intercepting a person's income tax refund. At least annually, the Department of Health Services (DHS) and Department of Children and Families (DCF) must certify to the Department of Revenue (DOR) the amounts it has determined it may recover because of an overissuance of public assistance, including food stamp benefits. Wis. Stat. § 49.85.

At least 30 days before certification of a public assistance debt, a notice of state tax intercept must be sent to the last-known address of the person from whom DHS or DCF intends to recover the debt. Wis. Stat. § 49.85(3). The notice must inform the person that he or she may appeal the determination of the DHS or DCF to certify the amount by requesting a hearing under sub. (4) within 30 days after the date of the letter and inform the person of the manner in which he or she may request a hearing. Wis. Stat. § 49.85(3)(a)2.

According to the Wisconsin FS Handbook, before DHS or DCF can certify a FS overissuance to the Department of Revenue, the overissuance must be considered delinquent. Wisconsin FS Handbook (FSH), § 7.3.2.10. “Delinquent” is defined in the Wisconsin FS Handbook as “failing to make the monthly payment by the due date three times over the life of the debt.” Id.

The collection system sends three dunning, or past due, notices for each of the three missed payments. Id. In addition to being “delinquent”, in order to certify a debt to the Department of Revenue for state tax intercept, the debt must meet all six of the criteria below:

1. Valid and legally enforceable
2. All error types
3. \$20
4. At least 30 days after the third notification of the tax intercept.
5. Free from any current appeals.
6. Incurred by someone who is not currently in bankruptcy.

Id.

In this case, the Petitioner does not dispute the underlying FS overissuance. Therefore, it is a valid and legally enforceable debt. However, there is an issue with whether the Petitioner’s debt was delinquent and whether it should have been certified to DOR for tax intercept.

A repayment agreement was sent to the Petitioner on July 2, 2015 and it was to be returned to the agency by July 25, 2015 with the Petitioner’s first monthly payment. Petitioner testified at the hearing that he never signed and returned the agreement. When the Petitioner failed to sign and return the agreement, a dunning notice was issued on August 4, 2015. Petitioner still did not sign and return the agreement and did not make any payments so second and third notices were issued on September 2, 2015 and October 5, 2015. Petitioner contacted the agency on October 30, 2015 and two payments of \$20/each (one for Petitioner’s claim and one for his wife’s claim) were posted by the public assistance collections unit on October 30, 2015.

According to the FS Handbook, in order to certify a debt for state tax intercept, the debtor must have missed three payments. According to the FS Handbook, the third payment is considered to be late if not received within 30 days after the third dunning notice. In this case, the Petitioner made a payment 25 days after the third dunning notice. Petitioner testified that he was told if he made the payment by the end of October, a tax intercept would not be issued.

The hearing testimony focused on the payment made by the Petitioner in October, 2015. After reviewing all of the evidence in this case as well as the applicable law and policies cited above, I conclude that the payment made by the Petitioner in October did, in fact, prevent the issuance of the tax intercept. It

appears that the problem was that the Petitioner did not make any payment in November, 2015. The failure to make a payment by the end of November, 2015 would constitute the third missed payment and render the debt delinquent. This in turn triggered the certification to DOR and the issuance of the tax intercept notice on December 11, 2015.

Further, I note that the failure to sign and return the repayment agreement is also sufficient to trigger a tax intercept action under the law.

The various notices issued to the Petitioner informed the Petitioner of the requirement to make monthly payments and return the repayment agreement as well as the consequences for the failure to take those actions. Therefore, I conclude, based on the evidence presented, that the Petitioner's debt became delinquent when he missed a third month of payment in November, 2015 and the agency had the authority to certify the Petitioner's debt to DOR for state tax intercept.

I will further note that if the Petitioner has evidence that he made a payment on the debt in November, 2015, he may follow the instructions below to request a rehearing in this matter and present evidence of the payment.

### **CONCLUSIONS OF LAW**

The agency had the authority to certify the Petitioner's debt to DOR for state tax intercept.

**THEREFORE, it is**

**ORDERED**

That the Petitioner's appeal is dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

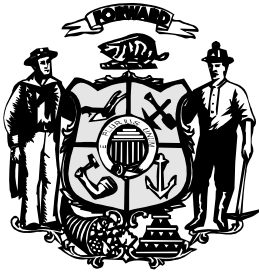
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 2nd day of February, 2016

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\sDebra Bursinger  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on February 2, 2016.

Kenosha County Human Service Department  
Public Assistance Collection Unit